

**State of Michigan
Department of Treasury**

**TAXPAYER
RIGHTS
HANDBOOK**



TAXPAYER BILL OF RIGHTS

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INTRODUCTION

The Taxpayer Rights Handbook was developed to explain employee responses to the public, standards for tax audit activities and to help taxpayers understand their rights and responsibilities; it does not take the place of the law. This Handbook is written as part of the provisions of Public Act (PA) 13 of 1993 and PA 14 of 1993. It has been updated to include the provisions of the Jobs Provider Bill of Rights.



SECTION 1 - DEPARTMENT AUTHORITY/GUIDELINES

TAXPAYER BILL OF RIGHTS

The Taxpayer Bill of Rights was a two-bill package signed by the Governor on April 1, 1993. On February 3, 2006, a package of bills known as the Jobs Provider Bill of Rights was signed by the Governor. The new laws amended and expanded the Taxpayer Bill of Rights.

Highlights of Jobs Provider Bill of Rights of 2006

Public Acts 5, 6, 7, 8, 9, 10, 11 and 12 of 2006:

- Provide that if a taxpayer serves written notice upon the Michigan Department of Treasury (Department) within 60 days of the issuance of a credit audit or a refund denial, that taxpayer is entitled to an informal conference on the question. (Effective February 3, 2006.)
- Provide that an auditor must notify the taxpayer of a refund opportunity in a timely manner if, during the course of an audit, the auditor identifies a refund opportunity. The taxpayer may then claim that refund under PA 162 of 1980 (Revenue Act). Neither the auditor nor the Department is required to provide detailed transactional support for refund claims or to perform any review beyond that necessary to satisfy the intended scope of the audit. (Effective October 1, 2006.)
- Provide that a taxpayer may offset credit amounts against debit amounts determined in an audit. Furthermore, a taxpayer subject to a use tax audit of its purchases may offset the use tax liability determined in the audit by the sales tax paid annually to Michigan vendors in error or the use tax paid annually to vendors outside Michigan in error on an amount up to \$5,000 in purchases. (Effective October 1, 2006.)
- Increase the length of time the taxpayer has to request an informal conference from 30 days from the Notice of Intent to Assess to 60 days. (Effective October 1, 2006.)
- Provide that any taxpayer who has made a timely request for an informal conference may withdraw that request by filing written notice with the Department. Upon receipt of the withdrawal, the Department must issue a decision, order of determination and final assessment where appropriate. The taxpayer may then exercise any appeal rights under Section 22 of the Revenue Act. (Effective October 1, 2006.)
- Require the Department to send notice to the taxpayer stating the amount of any refund the Department believes is owed the taxpayer as a result of an audit. The notice must inform the taxpayer of any appeal rights. (Effective October 1, 2006.)

- Provide that a taxpayer may convert a disputed assessment to a claim for refund by notifying the Department in writing during the course of an informal conference. The written notice must include payment of the contested amount. The informal conference continues and the Department must issue a decision and order regarding the refund claim. (Effective October 1, 2006.)
- Provide that a taxpayer will not be penalized for relying on a bulletin or letter ruling issued by the Department after September 30, 2006. However, taxpayer reliance is limited to issues addressed in the bulletin or letter ruling at issue for tax periods up to (a) the effective date of an amendment to the law upon which the bulletin or letter ruling is based, or (b) the date of a final order of a court of competent jurisdiction for which all appeal rights have been exhausted or have expired that overrules or modifies the law upon which the bulletin or letter ruling is based. (Effective February 3, 2006.)

Highlights of Taxpayer Bill of Rights

Public Act 13 of 1993:

- Requires the preparation of a general brochure for taxpayers outlining their rights and responsibilities.
- Requires the Department to send a non-threatening letter of inquiry when it is believed a taxpayer owes additional tax. While this is general practice, the law codified the practice to ensure consistency. The letter of inquiry is not required if the taxpayer files a tax due return without payment (no remittance), affirmatively admits a tax is due and owing or if the deficiency results from a Department audit.
- Through September 30, 2006 allows the taxpayer 30 days to request an informal conference from receipt of the Notice of Intent to Assess.
- Provides that an informal conference must be set at a mutually agreeable location and time. The taxpayer can appoint a third party to represent him or her at the conference and the participants may record the proceedings with prior notification to the parties involved.
- Provides 35 days to appeal a Decision and Order from the informal conference to the Tax Tribunal.
- Protects confidential taxpayer information from subpoena if the court order is for a non-tax matter (i.e., prevents the collection of confidential taxpayer information for court cases that do not pertain to tax matters).
- Requires the prompt release of liens. If a lien is placed and the debt for which it was placed is paid, the Department must release the lien within 20 business days. If the lien was placed improperly, the Department must withdraw the lien within five business days.

- Requires the prompt release of levies. If a liability for which a levy has been placed is satisfied, the Department must release the levy within ten business days. If the levy was placed improperly, the Department must withdraw the levy within five business days.
- If the lien or levy has been placed improperly, requires the Department to reimburse associated bank/administrative fees to the taxpayer.

Public Act 14 of 1993:

- Requires the Department to promulgate rules that set standards for fair and courteous treatment of the public and to develop a system to monitor employee responses. It also requires the Department to implement procedures governing an informal conference. See Michigan Administrative Code R205.1002, et seq.
- Requires the Department to develop guidelines governing employee responses to the public and standards for tax audit activities. The Taxpayer Rights Handbook must be available to the general public and practitioners and must be distributed to all employees of the Department. Copies may be obtained by calling 1-800-827-4000.
- Requires the Department to develop a brochure primarily intended for tax preparers explaining audit and collection procedures and communications with taxpayers during audits and the collection process.
- Requires the Department to send copies of tax records and correspondence to a taxpayer's representative if the taxpayer submits a written request authorizing release to a representative.
- Equalizes the interest rate for deficiencies and overpayments.
- Requires the Department to develop guidelines defining "reasonable cause for waiver of penalty," and requires the Department to waive penalty if a taxpayer demonstrates that reasonable cause criteria have been met. See Michigan Administrative Code R 205.1012, et seq.
- Provides that the Department may not assess a taxpayer any penalty for underpayment of estimates if the taxpayer was not required to file estimated payments in the previous tax year.
- Requires the Department to waive civil and criminal penalties if a taxpayer's deficiency or request for excessive refund results from the taxpayer's reliance on erroneous written information from the Department.

TAXES AND FEES ADMINISTERED BY MICHIGAN DEPARTMENT OF TREASURY

The following chart lists taxes and fees administered by the Department. The taxpayer may expect a tax examination by a representative of the Department if he or she is liable for one or more of these taxes.

<u>Tax/Fee</u>	<u>Legal Authority (Public Act, Year)</u>
Airport Parking	PA 248, 1987
Aviation Fuel	PA 327, 1945
Cigarette - see Tobacco Products	
Commercial Mobile Radio Service	PA 80, 1999
Diesel Motor Fuel	PA 150, 1927
Environmental - see MUSTFA	
Estate*	PA 54, 1993
Farmland and Open Space Preservation Tax Credit	PA 116, 1974
Gasoline	PA 150, 1927
Gas and Oil Privilege Fee	PA 61, 1973
Income	PA 281, 1967
Income Tax Withholding	PA 281, 1967
Industrial/Commercial Facilities	PA 198, 1974
Inheritance**	PA 54, 1993
Insurance Company Retaliatory	PA 261, 1987
Intangibles***	PA 30, 1939
Liquefied Petroleum Gas	PA 150, 1927
Michigan Underground Storage Tank Financial Assurance Act	PA 518, 1988
Motor Carrier Fuel	PA 119, 1980
Off Road Vehicle, Watercraft and Snowmobile Fuel	PA 221, 1987
Real Estate Transfer	PA 330, 1993
Sales	PA 167, 1933
Severance of Oil and Natural Gas	PA 48, 1929
Single Business	PA 228, 1975
State Convention Facility	PA 106, 1985
State Education	PA 331, 1993
Tobacco Products	PA 327, 1993
Use	PA 94, 1937
Utility Property	PA 282, 1905

* The Federal Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 phased out the state tax credit allowed against the federal estate tax in 25 percent increments between 2002 and 2005. EGTRRA effectively ended Michigan's estate tax as of 1/1/2006.

** For deaths before 10/1/1993 or generation skipping transfers occurring after 12/31/1992 but before 10/1/1993.

*** Repealed per PA 5 of 1995 effective 1/1/1998.

DISCLOSURE AND POWER OF ATTORNEY

Under the Internal Revenue Code and the Revenue Act, Department employees and anyone acting on behalf of the Department are required to protect the confidentiality of taxpayer information, including information from tax returns, account information and filing records. Inappropriate or unauthorized disclosure is a felony punishable by fines and imprisonment and is grounds for immediate dismissal of the employee or representative of the Department making the unauthorized disclosure.

Disclosure may be made only to the taxpayer of record as indicated on the registration form and/or returns filed by a business or on the tax returns in the case of individual filers. A taxpayer may elect to authorize disclosure to other parties by completing form 151 POWER OF ATTORNEY AUTHORIZATION, or its equivalent signed release, giving the Department specific permission to discuss his or her account with the person listed on 151.

Taxpayers may limit the 151 to specific time periods and for specific types of taxes and issues.

Taxpayers may request that an authorized representative listed on the 151 receive copies of notices and/or correspondence sent to the taxpayer. Requests must be made in writing and directed to the appropriate taxing division or the Collection Division.

If the taxpayer is deceased, the decedent's representative must provide court documents naming him or her as authorized representative of the decedent and decedent's estate.

TAX BILLING AND APPEALS PROCESS

Notifying Taxpayer of Tax Liability: Letter of Inquiry

If the Department's review indicates the taxpayer may owe taxes, a LETTER OF INQUIRY will be sent to the taxpayer. The LETTER OF INQUIRY states the reason tax may be owed and requests the taxpayer provide information supporting the return as filed by the taxpayer. A LETTER OF INQUIRY also explains how to communicate with the Department to resolve the issue. The taxpayer has 30 days from the time the LETTER OF INQUIRY is sent to resolve the deficiency before a NOTICE OF INTENT TO ASSESS is issued. The Department is not required to send a LETTER OF INQUIRY if the taxpayer files a return without paying the tax due or owes taxes determined by an audit.

The Department will send a LETTER OF INQUIRY when the return filed does not agree with the amounts shown on the return filed with the Internal Revenue Service. The letter will explain the specific item on the State return that does not agree with the federal return and give the taxpayer the opportunity to explain why the amount shown on the State return was different.

The Department may also send a LETTER OF INQUIRY where comparisons have been made to records of other State agencies and it appears that the proper tax returns have not been filed and paid. In this case, the letter will identify the records matched and give a description of the proposed taxes due, the type of tax and the return period.

When a business is registered with the Department, a reminder letter for the first sales, use and withholding tax return may be sent to the business if the return was not filed by the due date.

Billing Process

If full payment of tax is not received by the due date, the Department will take the following steps:

1. Collection Division will send a NOTICE OF INTENT TO ASSESS to the taxpayer for the balance of taxes due. The NOTICE OF INTENT TO ASSESS includes: (a) amount of tax owed, (b) reason for deficiency, and (c) statement advising the taxpayer of the right to dispute the amount of tax owed by requesting an informal conference. The request must be in writing and must state the amount in dispute and why the taxpayer believes the tax is not owed. An informal conference may be requested within 60 days of the NOTICE OF INTENT TO ASSESS .
2. If the taxpayer does not pay the tax or present correcting information or request an informal conference within 60 days after receiving the NOTICE OF INTENT TO ASSESS, the Collection Division will send a BILL FOR TAXES DUE (FINAL ASSESSMENT) to the taxpayer.
3. If the taxpayer does not make payment or payment arrangements with Collection Division within 35 days after receiving the BILL FOR TAXES DUE (FINAL ASSESSMENT) and does not appeal the assessment, the Collection Division:
 - A. May intercept paychecks.
 - B. May levy bank accounts.
 - C. Will intercept refund monies owed to the taxpayer by the State and apply to taxpayer debts.
 - D. Will apply penalty and interest as long as there is a tax balance due. (Payments are applied first to interest, then to penalty, and finally to tax due.)
 - E. Will place liens on taxpayer homes, businesses or personal property to protect the State's interest. If taxpayer wishes to sell property, the Department will send a representative to the sale to accept full payment of taxpayer's liability.
 - F. In extreme cases, will issue jeopardy assessment to freeze taxpayer assets if at any time it is believed the taxpayer is planning to sell or hide property to avoid seizure. Taxpayer will not be able to withdraw money from bank accounts or transfer the title of any property owned.

Taxpayers can avoid enforcement actions by taking immediate steps to resolve their tax debts when the Department first contacts them. Taxpayers who are unable to pay the tax due at any time during the billing process, can contact the Collection Division to request an installment agreement (monthly payments).

Fair Collection of Tax

A taxpayer who receives a LETTER OF INQUIRY and disputes the amount owed may waive the 30-day waiting period between the LETTER OF INQUIRY and the NOTICE OF INTENT TO ASSESS. When the waiver is requested, the NOTICE OF INTENT TO ASSESS is issued immediately and the taxpayer may then exercise appeal rights.

Bills received from the Department should be reviewed to make sure they are correct. If a bill is incorrect, notify the Department right away to have the bill adjusted.

To have a bill explained, contact the Department at the number listed in the top-right corner of the NOTICE OF INTENT TO ASSESS or the BILL FOR TAXES DUE (FINAL ASSESSMENT). Forward correspondence about original or amended returns or questions about payments in response to the bills to:

Collection Division
Michigan Department of Treasury
P.O. Box 30199
Lansing, MI 48909

Payment Arrangements

Taxpayers should make every effort to pay their bills in full. However, if a taxpayer is unable to make a full payment, the taxpayer should pay as much as he or she can and immediately contact the Department to request payment arrangements for the balance. The Department may ask for a complete financial statement from the taxpayer to determine how the taxpayer can pay the amount due. If the taxpayer cannot borrow the amount due and does not have sufficient disposable assets from which full payment could be made, the taxpayer may qualify for monthly payments under an installment agreement.

Appeals Process

Taxpayers have the right to appeal any final determination made by the Department including a reduced or denied refund or credit forward, a NOTICE OF INTENT TO ASSESS and a BILL FOR TAXES DUE (FINAL ASSESSMENT). The forum for the appeal and the time limit for requesting an appeal depend upon the type of final determination.

Informal Conference

1. An informal conference with a Department hearing referee must be requested in writing within 60 days of receiving a notice of reduced or denied refund, a notice of reduced or denied credit forward or a NOTICE OF INTENT TO ASSESS. Include in the request the amount of tax in dispute and why the tax is not owed. The portion of tax bill that is not disputed must be paid.
2. If an appeal to a NOTICE OF INTENT TO ASSESS is determined to be a frivolous protest or a desire by taxpayer to delay or impede the administration of taxes, the taxpayer could be subject to a 25 percent penalty.
3. A hearing date and place is set that is convenient for all parties. The Department sends out a notice for informal hearing to taxpayer stating the scope and nature of the subject of the informal conference. Taxpayer may bring an attorney or other representative to the hearing or authorize a representative to attend the hearing in place of the taxpayer. If a representative attends the hearing without the taxpayer, form 151, or its equivalent, must be filed with the Department. Taxpayer may record the hearing after giving the Department prior notice. The Department, likewise, may record the hearing with prior notice to taxpayer.
4. The referee makes a recommendation to the State Treasurer who makes a final decision and issues a Decision and Order.
5. Taxpayer may appeal the Decision and Order of the State Treasurer to either:
 - A. Michigan Tax Tribunal within 35 days, which requires payment of the undisputed amount, **or**
 - B. Court of Claims (Ingham County Circuit Court) within 90 days, which requires payment of the full amount of the assessment.

Michigan Tax Tribunal. Taxpayers may choose to appeal directly to the Tax Tribunal within 35 days of receiving a notice of reduced or denied refund, a notice of reduced or denied credit forward or a BILL FOR TAXES DUE (FINAL ASSESSMENT) instead of requesting an informal conference. The Tax Tribunal will send the taxpayer information including the filing fee, which must be paid when the appeal is filed. Any portion of the tax, penalty or interest due which is not being disputed must be paid prior to Tax Tribunal review. A taxpayer may represent himself or herself or have an authorized representative attend the hearing. The taxpayer and the Department have the right to appeal Tax Tribunal decisions to the Court of Appeals within 90 days after the Tax Tribunal decision.

Court of Claims. Taxpayers may choose to appeal directly to the Court of Claims (Ingham County Circuit Court) within 90 days of receiving a notice of reduced or denied refund, a notice of reduced or denied credit forward or a BILL FOR TAXES DUE (FINAL ASSESSMENT). Appeals to the Court of Claims require payment of the full amount of the assessment.

PENALTY AND INTEREST CHARGES AND WAIVERS

Interest

Interest must be paid on additional tax owed or tax paid late. Interest is computed from the due date of the return through the date of payment. The current interest rate for taxes due is determined each July 1 and January 1, and equals 1% above the adjusted prime rate. Interest is charged on the unpaid balance of tax due.

Penalties

Below is a chart of the various penalties and the reason they are assessed.

<u>Reason for Bill</u>	<u>Penalty Charges</u>
Failure to file or pay tax	For NOTICE OF INTENT TO ASSESS, 5% if not more than 2 months. Additional 5% per month or part of month, to maximum 25%. Minimum \$10. Interest applies.
Negligence	10% of tax. Minimum \$10. Interest applies.
Intentional disregard	25% of tax. Minimum \$25. Interest applies.
Fraudulent evasion of tax	100% of tax. Interest applies.
Bad check	For NOTICE OF INTENT TO ASSESS, \$50.
Frivolous protest of tax due	25% of tax. Minimum \$25.
Failure to file information return or report	\$10 each day, to maximum \$400 each return.

In some cases, more than one penalty will be applied based on the circumstances. Taxes due based on an audit of the taxpayer's records may have a 10% negligence, 25% intentional disregard or a 100% fraud penalty applied. In addition, the failure to pay penalty (5% per month/25% maximum) will be applied to the unpaid balance of taxes due from an audit 30 days after the issuance of a NOTICE OF INTENT TO ASSESS.

Penalty Waivers

A taxpayer requesting a waiver of penalty must do so in writing and must explain the reason(s) for late payment of tax. If the taxpayer establishes reasonable cause, the Department will waive the penalty charge.

Examples that are illustrative, but not conclusive, in showing reasonable cause include:

1. Failure to file or pay taxes is caused by the death or serious illness of the taxpayer responsible for filing.
2. Failure to file or pay taxes is caused by the destruction of the taxpayer's records or the taxpayer's business by fire or other casualty.
3. Failure to file or pay taxes is caused by the prolonged unavoidable absence of the taxpayer responsible for filing and the taxpayer is precluded, due to circumstances beyond the taxpayer's control, from making alternate arrangements for filing or paying.
4. Showing that the completed return or payment was timely mailed (i.e., the United States postmark stamped on the envelope is dated on or before the due date set for filing the return, including extensions).
5. Showing that the delay or failure is caused by erroneous written information that has been given to the taxpayer by an employee of the Department.

Interest Waivers

Interest is charged for the use of money and is not typically waived.

SECTION 2 - EMPLOYEE/TAXPAYER GUIDELINES

EMPLOYEES' RESPONSES TO TAXPAYER INQUIRIES

Employees and anyone acting on behalf of the Department (representatives) are expected to:

1. Respond to taxpayers' inquiries, written and verbal, in a prompt, courteous and professional manner.
2. Respond to taxpayers' inquiries or direct taxpayers to the most appropriate information source available. In all cases, employees/representatives will maintain a pleasant voice, be courteous and professional and provide the best service available to taxpayers.
3. Respond to written inquiries according to established policies which determine priority given to written correspondence and letter content. Written responses shall be accurate, professionally written, non-threatening and contain a Department contact and telephone number.

Letters of inquiry are sent to taxpayers who owe additional tax and are sent prior to issuance of an actual assessment. Letters of inquiry must be non-threatening and must explain why additional tax is due and what the taxpayer must do to resolve the situation.

Department employees/representatives are specifically prohibited from:

1. Discussing any account with anyone other than the taxpayer of record or the taxpayer's authorized representative.
2. Using inappropriate language in any conversation with a taxpayer. Racist, sexist or vulgar language is never appropriate.
3. Speaking in a hostile tone of voice or shouting at a taxpayer.
4. Threatening a taxpayer and/or the taxpayer's family.

It is the responsibility of each supervisor to monitor the behavior of employees/representatives on the telephone and to review outgoing correspondence for compliance.

TAXPAYERS' RIGHTS AND RESPONSIBILITIES

Courtesy and Consideration

Department employees/representatives shall give taxpayers prompt, fair and courteous service. The Department's goal is to ensure that taxpayers' rights are protected so taxpayers will have the highest confidence in the integrity, efficiency and fairness of the State of Michigan's tax system. Taxpayers have the right to file a complaint against Department employees/representatives who fail to provide this service.

The Department shall have a system for monitoring compliance with the standards of fair and courteous treatment of the public which shall include, and not be limited to, the ability of aggrieved persons to complain to the immediate supervisor of the individual who acts improperly, the ability of the Department to discipline that person who acts improperly and the ability of the Taxpayer Advocate to respond to complaints from the public.

Privacy and Confidentiality

Taxpayers have the right to privacy; therefore, Department employees/representatives shall maintain the confidentiality of taxpayer information. Taxpayers have the right to know why the Department is asking them for information, how the information will be used and what might happen if they do not provide the information. Taxpayers have the right to file a complaint against Department employees/representatives who make unauthorized disclosures of confidential tax information.

Under the law, the Department may share a taxpayer's tax information with the Internal Revenue Service, tax agencies for other states and local units of government within Michigan with whom the Department has information exchange agreements. Exchange with these agencies is performed under strict legal guidelines.

Taxpayer Information and Help

Taxpayers have the right to information and help in complying with tax laws. In addition to the basic instructions that are provided with the tax forms, the Department also makes this and other information available online at www.michigan.gov/treasury or by calling 1-800-827-4000.

Taxpayers experiencing difficulty in clearing up tax matters can contact the Taxpayer Advocate Office by writing to:

Taxpayer Advocate Office
Michigan Department of Treasury
Lansing, Michigan 48922

If the tax problem is causing or will cause the taxpayer significant hardship, the Taxpayer Advocate will arrange for immediate review of the problem. While the case is under review, the Collection Division will take no further enforcement action.

Taxpayer Responsibilities

Taxpayers are responsible for filing their tax returns on time with correct payments when required and for ensuring that their returns are correct, no matter who prepares them.

Taxpayers shall keep accurate and complete records necessary for the proper determination of tax liability.

Taxpayers have the right to plan their business and personal finances in such a way that they will pay the least tax due under the law. They are liable only for the correct amount of tax and any related penalties and interest. The Department's purpose is to apply the law consistently and fairly to all taxpayers and to collect only the actual amount due under the law.

Taxpayer Contact

If a taxpayer's tax return is selected for review, the reviewer may need to verify some information with the taxpayer. This is usually handled through correspondence or by telephone. The taxpayer should provide the Department with whatever tax information is required to complete the review of the taxpayer's return as quickly and as efficiently as possible.

Audit

If a taxpayer's tax return and supporting records are selected for audit, an auditor is usually required to visit the taxpayer and conduct an interview. In tax audit situations, taxpayers have the right to:

1. Ask that the audit take place at a reasonable time in a convenient location.
2. Represent themselves, have other persons accompany them or have other persons represent them in their absence with proper authorization.
3. Ask for and receive copies of the audit workpapers that show how the auditor determined changes to their taxes, if any.
4. Meet with the auditor to discuss audit determinations and related reports.
5. Meet with the audit supervisor to discuss disagreements with changes made to their taxes, if any.
6. Notice of a refund opportunity in a timely manner if, during the course of an audit, the auditor identifies a refund opportunity. The taxpayer may then claim that refund under the Revenue Act. Neither the auditor nor the Department is required to provide detailed transactional support for refund claims or to perform any review beyond that necessary to satisfy the intended scope of the audit. (Effective October 1, 2006.)
7. Offset credit amounts against debit amounts determined in an audit. Furthermore, a taxpayer subject to a use tax audit of its purchases may offset the use tax liability determined in the audit by the sales tax paid annually to Michigan vendors in error or the use tax paid annually to vendors outside Michigan in error on an amount up to \$5,000 in purchases. (Effective October 1, 2006.)
8. Notice of the amount of any refund the Department believes is owed the taxpayer as a result of an audit. The notice must inform the taxpayer of any appeal rights. (Effective October 1, 2006.)

EMPLOYEE CONDUCT

State Ethics Act

The State Ethics Act (PA 196 of 1973, as amended) contains guidelines for ethical conduct by public officers or employees. Under the Act, it is unethical for Department employees/representatives to:

1. Divulge confidential information to unauthorized persons prior to its authorized release to the public.
2. Represent his or her personal opinion as that of the Department.
3. Use State resources, property and funds for personal gain or benefit.
4. Solicit or accept a gift or loan of money, goods, services or other item or service of value for personal gain or benefit.
5. Engage in a business transaction for personal gain or benefit.
6. Engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with official duties or affects the person's judgment or action in performing his or her duties.
7. Participate in the negotiation or execution of contracts, make loans, grant subsidies, fix rates, issue permits or certificates, or other regulation or supervision relating to a business entity where there is a financial or personal interest.

Civil Service Rules and Treasury Policies and Procedures

Department employees/representatives must comply with Civil Service Rules and Department policies and procedures regarding confidential information, conflict of interest, employee conduct, supplemental employment and any other ethics- and/or conduct-related policies and procedures. Below are general guidelines that employees/representatives must follow.

Fairness and Impartiality

Individuals must treat taxpayers, their employees and their representatives in a professional manner. Audit plans and actions must be fair and impartial.

Dealing With Hostile Taxpayers

Taxpayers may appear hostile or take on an adversarial position because they feel intimidated by auditors' or collectors' presence. Employees/representatives are to show respect and courtesy to taxpayers at all times even though the same respect and courtesy may not be returned. Employees/representatives should not engage in arguments with taxpayers.

Taxpayers do not have the right to be abusive with employees/representatives. If a taxpayer uses abusive language or attempts to intimidate or otherwise threaten an employee/representative, the taxpayer will be informed that his or her words or actions are abusive and/or offensive and the taxpayer's abusive conduct must cease. If taxpayer continues to be abusive, the employee/representative must inform the taxpayer that his or her business will be completed at a later date. The employee/representative will inform the supervisor of the abusive conduct and any threats to or assaults on the individual.

Under no circumstances should Department employees/representatives remain in an abusive or hostile environment or carry weapons. When necessary, security escorts will be used.

Disclosing Confidential Tax Information

Taxpayer returns and any related tax information obtained in the processing of tax returns will not be disclosed to unauthorized persons.

The Department may take disciplinary action and/or seek felony charges against any current or former employees/representatives who make unauthorized disclosures. If an employee/representative is found to be criminally liable, he or she may face a maximum penalty of five years in prison, a fine of not more than \$5,000 and automatic dismissal from employment.

Under the Revenue Act, it is illegal for employees/representatives to make improper disclosures to any unauthorized individual, including:

1. Unauthorized employee
2. Unauthorized family member
3. Unauthorized representative
4. Taxpayer's competitor.

It is also improper for employees/representatives to disclose confidential Department policies and procedures to any unauthorized individual regarding:

1. Audit selection and collection criteria
2. Internal verification codes
3. Treasury employee's address, telephone or other personal information
4. Confidential communications
5. Audit processing criteria.

Confidential tax information is protected from subpoena if the court order is for a non-tax matter. Disclosures can be made if disclosure is: (1) required for the proper administration of a tax law, (2) pursuant to judicial order sought by agency charged with the duty of enforcing or investigating support obligations, or (3) pursuant to a judicial order sought by any government agency charged with the responsibility for administering or enforcing criminal law.

Social Security Numbers

The Federal Privacy Act of 1974 and the Federal Tax Reform Act of 1976 specifically allow the Department to use Social Security numbers (SSNs) in the administration of Michigan tax statutes. Although the use of SSNs is allowed by federal law, the disclosure of SSNs and other personal information is regulated by Michigan's Revenue Act and Identity Theft Protection Act.

The Revenue Act provides specific penalties for the release of taxpayer information, including SSNs. The disclosure rules are discussed in detail in the preceding "Disclosing Confidential Tax Information" section.

The Identity Theft Protection Act, as amended by PA 566 of 2006, requires the Department to give Michigan residents notice when their personal information has been accessed by an unauthorized person that may result in substantial loss, injury or identity theft.

If a taxpayer's SSN or other personal information has been accessed without authorization, the Department will send written notice by a variety of means including United Postal Service mail, electronic mail (e-mail) or telephone. E-mail can only be used with taxpayer consent. Consent can be implied from an existing business relationship that has involved e-mail. If notice is by telephone, the Department cannot leave a recorded message.

If the cost of providing notice exceeds \$250,000 or the Department has to provide notice to more than 500,000 Michigan residents, the Department may provide substitute notice by doing **all** of the following:

- Sending an e-mail notice to Michigan's residents for whom the Department has e-mail addresses.
- Conspicuously posting the notice on the Department Web site.
- Notifying major statewide media, including a telephone number or a Web site address that provides additional assistance and information.

The notice will include a description of the type of personal information that was accessed without authorization. The Department will explain what has been done to protect data from further security breaches. The notice will provide a telephone number for assistance or additional information. Finally, the notice will remind taxpayers of the need to remain vigilant for incidents of fraud and identify theft.

If the Department knowingly fails to provide any notice of a security breach, it may be subject to a fine of not more than \$250 for each failure to provide notice. The aggregate liability for civil fines for multiple violations that arise from the same security breach shall not exceed \$750,000.

This section does not apply to the access or acquisition by a person or agency of federal, state or local government records or documents lawfully made available to the general public.

Unbecoming Conduct

Employees/representatives are subject to public scrutiny on the job and during off-hours. The conduct of auditors and collectors should always be ethical. The credibility of an auditor or collector, and ultimately the Department, may be damaged by the **appearance of impropriety**, as well as **actual** impropriety by the individual.

Unbecoming conduct by Department employees/representatives could seriously damage their ability to do their jobs effectively and includes the following:

1. Solicitations/acceptance of gifts, loans, services or any other item of value
2. Inappropriate or illegal use of drugs, including alcohol and other intoxicants
3. Improper care or use of vehicles on official State business
4. Offensive language or gestures.

Conflict of Interest

Employees/representatives are prohibited from participating in any outside business-related transactions or from divulging confidential information to unauthorized persons for personal financial gain (or financial gain for a member of the employee's immediate family) which is in any way connected to an employee's/representative's official State duties and/or access to confidential information.

Employees/representatives are specifically prohibited from:

1. Divulging or releasing, for personal financial gain or financial gain for a member of an employee's/representative's immediate family, any confidential information which is not by law, rule, regulation or court order available to the general public.
2. Engaging in any business transaction or private arrangement for personal financial gain or financial gain for a member of employee's/representative's immediate family, which is based on the employee's/representative's position or the employee's/representative's access to confidential information.
3. Soliciting, accepting or agreeing to accept anything of value under any circumstances which could reasonably be expected to influence the manner in which an employee/representative performs work or makes decisions.
4. Granting or making available to any person any consideration, treatment, advantage or favor beyond general practices for similar circumstances.
5. Representing or acting as agent for any private interests, whether for compensation or otherwise, in any transaction in which the State has a direct and substantial interest and which could reasonably be expected to result in a conflict between the private interests of the employee/representative and the employee's/representative's official State responsibilities.

6. Having any substantial interest in any business or industry where the employee/representative in a significant decision-making capacity participates on behalf of the State in the regulation, enforcement, auditing, licensing or purchasing of any goods or services.

Disclosing Conflict of Interest

All State employees/representatives must disclose to their Personnel Officer all personal or financial interests and the interests of members of their immediate families, in any business or entity with which they have direct contact while performing official duties. This includes auditors who audit financial records of businesses or individuals and their supervisors.

Supplemental Employment

Outside employment is permitted only when such employment does not in any way conflict with the individual's work hours or State employment or in quantity or interest conflict in any way with satisfactory and impartial performance of duties. Prior written approval must be obtained from the division administrator and the Personnel Officer before employees/representatives engage in any outside employment. Employees must notify their division administrator and Personnel Officer of any contemplated changes in outside employment.

Employee/representative requests for supplemental employment will be reviewed on a case-by-case basis. Because of the highly sensitive and confidential nature of the auditor's or collector's position, duties and work, supplemental employment will only be approved when there is clearly **no** conflict or adverse affect on the auditor's or collector's duties with the Department.

Following Departmental Policies and Procedures

Employees/representatives should observe applicable laws and Departmental policies and procedures in their daily interactions with others in the Department. They are to:

1. Prepare and file personal tax returns.
2. Operate a vehicle for State business with valid licenses.
3. Properly account for time spent on official State business.
4. Properly account for expenses incurred on official State business.
5. Use State resources provided for State business as efficiently as possible.
6. Give the Department due consideration and loyalty as employees of the Department.

AUDIT AND COLLECTION GOALS OR QUOTAS IN EMPLOYEE EVALUATION PROHIBITED

The use of an audit or collection dollar goal or quota for evaluating an employee/representative of the Department is expressly prohibited.

The Department, through its designated management team, will develop and administer appropriate standards for evaluating performance.

SECTION 3 - AUDIT GUIDELINES

TAX AUDITS

Legal Authority

Authority to conduct audits for the taxes administered by the Department is provided for in PA 122 of 1941, Section 3(a), as amended, being section 205.3a of the Michigan Compiled Laws.

Purpose

The purpose of tax audits is to determine if taxpayer returns have been prepared and filed correctly. This usually involves an examination conducted at taxpayer's place of business. During the examination process, the auditor reviews the facts, circumstances, records and other pertinent information that support the taxpayer's return. The audit work may take as little as a few days or longer, depending on the complexity of the audit situation (e.g., size of business, diversity of operations, etc.). Ultimately, the auditor makes a final determination that the taxpayer's return is:

1. Filed correctly (no changes)
2. Overpaid (taxpayer is entitled to a credit)
3. Underpaid (taxpayer owes additional tax).

Scope

The specific scope of taxpayer audits is dependent on several factors:

1. Tax involved (type and number)
2. Records (complexity, quality, location and availability)
3. Taxpayer type (individual, proprietorship, corporation, etc.)
4. Type of business.

Audit Selection

It is not possible to audit all of the taxpayers in Michigan with the limited resources that are available. Instead, risk assessment models are used to evaluate taxpayers for audit.

Audit Assignment

Once selected for an audit, the taxpayer's returns and related tax filing information become part of an audit case file. The assignment will be made to an auditor working in the same area where the taxpayer resides or has his or her place of business, provided current staffing allows such assignment.

Pre-Audit Plan

The auditor's first step is to develop an audit plan. This plan details the specific taxes to be reviewed, questions to ask taxpayer during interview, initial review of taxpayer's business operations, what records are needed, if those records will be tested, which tests will be used and the degree of internal control that exists within taxpayer's accounting process. If the taxpayer has a high level of internal control over his or her accounting process, the auditor will place more reliability on the taxpayer's supporting records. The auditor is expected to discuss the audit plan with the taxpayer or the taxpayer's authorized representative prior to conducting relevant procedures and tests.

Conduct the Audit

The auditor gathers data through a combination of observing the taxpayer's operation, asking questions and reviewing selected accounting procedures, records, and third-party verifications. The auditor correlates the findings with the taxpayer's return and makes a determination of the accuracy of the return.

Present the Findings

The auditor presents the results of the audit to the taxpayer when the audit work is completed and the determination is final. The auditor is expected to discuss the determination with the taxpayer or the taxpayer's authorized representative. If any changes were made to the tax liability, the auditor will explain why additional taxes were found due or why taxes were overpaid.

If the taxpayer owes tax after the audit is completed and agrees with all or part of the determination, the auditor will accept full payment of the undisputed portion of the determination.

If the taxpayer disagrees with the audit findings, he or she has the right to discuss them with the immediate audit supervisor and/or the regional audit manager. Finally, the taxpayer has the right to appeal all or part of the audit determination. See the "Appeals Process" section on page 8 of this Handbook.

Report the Findings

The auditor prepares a written report at the close of the audit. This report includes information about:

1. Audit method and procedures
2. Results of audit
3. Penalty and interest recommendations
4. Taxpayer's agreement/disagreement with audit findings
5. Taxpayer's intent to appeal
6. Payment or refund procedures.

In addition, under the Jobs Provider Bill of Rights of 2006, the auditor must:

1. Give notice of a refund opportunity in a timely manner if, during the course of an audit, the auditor identifies a refund opportunity. The taxpayer may then claim that refund under the Revenue Act. Neither the auditor nor the Department is required to provide detailed transactional support for refund claims or to perform any review beyond that necessary to satisfy the intended scope of the audit. (Effective October 1, 2006.)
2. Offset credit amounts against debit amounts determined in an audit. Furthermore, a taxpayer subject to a use tax audit of its purchases may offset the use tax liability determined in the audit by the sales tax paid annually to Michigan vendors in error or the use tax paid annually to vendors outside Michigan in error on an amount up to \$5,000 in purchases. (Effective October 1, 2006.)
3. Give notice of the amount of any refund the Department believes is owed the taxpayer as a result of an audit. The notice must inform the taxpayer of any appeal rights. (Effective October 1, 2006.)

Quality Review

A tax audit is subject to two levels of review by the immediate audit supervisor and the regional audit manager.

Steps are immediately taken to correct any errors, omissions or oversights detected during the review process. Any changes are communicated to the auditor and ultimately to the taxpayer through the auditor. The taxpayer has the right to receive copies of work papers that reflect changes made during the review process.

THE TAX AUDITOR

Introduction

Michigan's tax structure relies on a system of voluntary compliance. The taxpayer, in preparing the tax return, acknowledges that he or she is subject to a particular tax, owes a certain amount and timely remits the amount owed.

The tax auditor is needed to guarantee the success of Michigan's system of voluntary compliance. The tax auditor and the tax audit provide:

1. A visible presence in the taxpayer community
2. Revenues to support State government programs that benefit all Michigan residents
3. Positive encouragement to the taxpayer community to remit their fair share of the total cost of government

4. A level playing field so that all members of the taxpayer community can compete equally.

Education

Tax auditors are professionals who must obtain at least a baccalaureate degree with a major in accounting. The Department encourages its auditors to pursue advanced degrees or to become Certified Public Accountants.

Taxpayer Contact

As a representative of State government, the auditor has daily contact with taxpayers, their employees and their representatives. The type of contact ranges from individual taxpayers to small business taxpayers to the largest multi-state and multi-national corporations located throughout the 50 states. The techniques and procedures used by the auditor during a tax audit vary according to the taxpayer's unique situation and the complexity of the taxpayer's return. No matter how varied the audit situation, the auditor is required to make a determination that a taxpayer's returns are filed correctly, overpaid or underpaid.

In addition, the auditor is always alert for any potential tax liability that may exist where no return was filed.

Training

A new auditor must undergo a rigorous training program that spans two to three years. The training involves a combination of classroom and on-the-job training. Auditors receive additional training each year.

TAXPAYER PREPARATION FOR THE AUDIT

This section is written for the taxpayer who is being audited. It is intended to help the taxpayer have a positive and successful audit experience.

Be Knowledgeable

Be aware of specific taxes, rules and regulations that apply to the situation. This is a key to peace of mind when the tax auditor calls. Taxpayers need to be aware of what the statutes require and what must be done to comply.

Be Prepared

Taxpayers may want to discuss the following items with the auditor when first contacted about the audit. Understanding the scope of the audit will help the taxpayer prepare and will help reduce the time needed for the audit.

1. Taxes covered in the audit
2. Timeframe or period covered by the audit
3. Records needed during the audit
4. Date the audit work begins
5. Expected length of time for the audit work.

Once these questions, are answered, the taxpayer can:

1. Gather the necessary records
2. Find a location readily available to the taxpayer and the auditor
3. Provide the auditor with a suitable workspace.

In turn, the auditor will ask the taxpayer:

1. How the business operates
2. Who is responsible for gathering tax information
3. Who is responsible for recording tax information
4. Who makes the business and tax-related decisions
5. What criteria are used to validate tax-exempt transactions
6. What is the method of accounting
7. What internal controls exist within the accounting and tax system.

If the taxpayer can answer these questions and provide the necessary supporting documentation, it will reduce the time it takes to perform the audit.

Post Audit

Taxpayers and their representatives must review the audit determination with the auditor. Corrective action should be taken as soon as possible to guarantee proper reporting in future periods. If the taxpayer does not understand the audit determination or does not implement effective remedies, he or she may be subject to penalties in subsequent audits.

AUDITOR CONDUCT

Taxpayer-Auditor Relationship

To complete an audit successfully, auditors and taxpayers need to work together. The nature of the work that auditors are required to perform may be perceived as threatening by the taxpayers; however, the relationship between taxpayers and auditors need not be adversarial. To facilitate cooperative relationships, auditors are required to:

1. Work with taxpayers to obtain information needed to complete an audit.
2. Explain to taxpayers, in clear terms, the findings of an audit and the propriety of audit recommendations.
3. Convey to taxpayers a positive public image of State government at work.

If the auditor is not complying with these requirements, the taxpayer has the right to discuss the situation with the auditor's supervisor.

Respecting the Taxpayer's Practices, Property and Privacy

Taxpayers have the right to expect minimal disruption to their business operations and to expect that auditors will not alarm their customers, their employees or their representatives or discuss sensitive tax matters with unauthorized personnel. Socializing with the taxpayer and the taxpayer's customers or employees disrupts the taxpayer's business workflow and is inappropriate conduct for auditors.

Auditors are expected to conform to the taxpayer's hours and business practices when working on site, including limiting lunch time to no more than one hour. Auditors must secure approval from taxpayers before using any office equipment (e.g., telephone, calculator, copying machine, etc.) and coffee/lunchroom facilities. Auditors should be absolutely certain they are not using the taxpayer's office equipment for anything other than business purposes and that it is used at the taxpayer's convenience, not theirs. If the auditor is a smoker, the auditor is expected to ascertain and conform to the taxpayer's smoking policy.

Informing the Taxpayer

Taxpayers and their designated representatives have the right to be kept informed throughout the conduct of the audit. Auditors are responsible for keeping taxpayers informed of:

1. Audit objectives and methods
2. Progress of the audit(s)
3. Procedures and tests being performed
4. Audit results
5. Appeal rights
6. Payment or refund procedures.

Determinations of tax liability are based on objective audit methods and procedures. Auditors will not discuss audit results with taxpayers until sufficient procedures provide relevant evidence to support the auditor's findings. Audit determinations are only made after the auditor has completed the fieldwork, left the taxpayer's premises and discussed the audit results with the audit supervisor.

AUDIT STANDARDS

General Standards

Auditors are expected to comply with *Government Auditing Standards (2007 Revision)*, commonly referred to as the *Yellow Book*. The American Institute of Certified Public Accountants (AICPA) issued the auditing and attestation standards described in this publication. Taxpayers may review the standards on the U.S. Government Accounting Office (GAO) Web site at www.gao.gov/govaud/ybk01.htm, or may request a printed copy from the Government Printing Office.

The auditor must have adequate technical training and proficiency to perform a tax audit. In all matters relating to the assignment, the auditor must maintain an independent and unbiased attitude. Also, the auditor must exercise due professional care in performing the examination and preparing the work papers, schedules, exceptions, summaries and reports.

Audit Work Standards

The audit work is to be adequately planned by the auditor-in-charge. If assisting auditors are required, they are to be given proper direction and instruction.

The auditor must evaluate the existing internal controls for accruing and reporting tax liabilities. The evaluation should be the basis for measuring the degree of reliance placed on the internal controls in determining the scope of the audit program objectives, methodologies, procedures and tests.

Sufficient competent evidence is to be obtained through inspection, observation, inquiry and confirmation to afford a reasonable basis for a determination of no change in tax liability, tax overpayment or tax deficiency.

Reporting Standards

The audit report shall:

1. State whether or not an adequate system of internal controls exists to accurately accrue and report the proper tax liability.
2. State whether or not the tax returns, as filed, are prepared according to existing tax statutes, rules, regulations and instructions.

3. State whether or not such practice has been consistently observed in the current period in relation to the preceding periods.
4. Adequately disclose the information, tests, techniques and procedures used to determine the deficiency or credit, or the accurate reporting of the tax liability for the period(s) involved.
5. Disclose, if the evidential matter warrants, a recommendation for penalty and interest, along with the basis for the recommendation, and the statutory authority providing for the penalty and interest.

SECTION 4 - COLLECTION GUIDELINES

COLLECTION ENFORCEMENT ACTION

Introduction

Collection Division will not take any enforcement action (e.g., record a tax lien, seize property or wages, etc.) until after appropriate notice and due process have been provided.

Taxpayers can stop the collection process at any stage by paying the assessed balance due in full. Once a tax account has reached the enforcement stage, Collection Division may take enforcement action to secure payment.

Recording Liens

Collection Division may record a tax lien against the taxpayer. The lien may be recorded with the county Register of Deeds for liens against the taxpayer's property or with the Department of State for liens against personal property. A recorded tax lien is a public record and may affect a taxpayer's credit rating.

Releasing Liens and Levies

If a lien is placed and the debt for which it was placed is satisfied, Collection Division must release the lien within 20 business days. If the lien was placed improperly, Collection Division must withdraw the lien within five business days.

If a liability for which a levy has been placed is satisfied, Collection Division must release the levy within ten business days. If the levy was placed improperly, Collection Division must withdraw the levy within five business days.

If a lien has been placed improperly, Collection Division will issue a CERTIFICATE OF WITHDRAWAL OF STATE TAX LIEN to remove the lien from the records of the Register of Deeds and/or Department of State, Uniform Commercial Code Section. Also, if a person is required to pay a fee to the Department, a bank or other financial institution as the result of an erroneous recording or filing of a lien, or an erroneous issuance and service of a WARRANT or WARRANT-NOTICE OF LEVY, the Department will reimburse fees to that person upon written request with proper documentation.

If a tax lien attaches to the wrong person or innocent third party, Collection Division can issue a CERTIFICATE OF NON-ATTACHMENT. The certificate is issued only after Collection Division has reviewed the evidence and determined that the requester is in fact not the assessed taxpayer.

Collection Division can issue a SPECIFIC RELEASE OF LIEN to release tax liens on specific property or entities which have outstanding tax assessments. In the case of the taxpayer selling real estate, the requester must provide proof of senior recorded interests in the property to be sold and the balance due on each, and distribute the proceeds from the real estate sale to the Department.

Properties Exempt From Levy

If Collection Division representatives must seize (levy on) property, the taxpayer has the legal right to keep the following assets:

1. A reasonable amount of personal belongings, clothing, furniture and business or professional books and tools
2. Unemployment, workers' compensation and certain pension benefits
3. Court-ordered child support payments
4. Mail
5. A predetermined amount of wages, salaries and other income (\$75 exemption per week, plus \$25 for each legal dependent).

If at any time during the collection process a taxpayer does not agree with the collection representative, the taxpayer can discuss his or her case with the collection supervisor.

Corporate Officer Liability

If a Collection Division representative believes that a taxpayer is a corporate officer responsible for ensuring that a corporation prepared its returns or paid the taxes and the taxes were not paid, the taxpayer may be held personally liable for the unpaid taxes and any related penalties and interest. A taxpayer assessed as a corporate officer has the same appeal rights as other taxpayers.

Successor Liability

If a taxpayer purchases an active or closed business or its stock of goods and the business owes taxes, the purchaser may be held liable as a successor for the unpaid taxes. A purchaser may avoid the possible liability at the time of the purchase by requiring the seller to provide a TAX CLEARANCE CERTIFICATE from the Collection Division stating that no taxes are due. Otherwise, the purchaser must develop and set aside (escrow) sufficient money to pay the taxes, interest and penalties owed by the seller. The purchaser's liability for the seller's tax debts is limited to the fair market value of the business or assets less the sale proceeds applied to debts for which there is a superior secured interest.